

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

| | | |
|-----------------------------|---|-------------------------|
| PAULA DAVIS-NIEHOFF, |) | |
| |) | |
| Claimant, |) | IC 2003-513778 |
| |) | |
| v. |) | |
| |) | |
| MICRON TECHNOLOGY, INC., |) | ORDER VACATING |
| |) | RECOMMENDATION |
| |) | AND ORDER |
| Employer, |) | |
| |) | |
| and |) | |
| |) | Filed December 28, 2007 |
| LIBERTY NORTHWEST INSURANCE |) | |
| CORPORATION, |) | |
| |) | |
| Surety, |) | |
| Defendants. |) | |
| |) | |

On October 29, 2007, Claimant filed with the Commission a Motion for Reconsideration and Rehearing. Claimant disagrees with the Referee's recommendation and maintains that she did not consent to the substitution of an alternate referee for the determination of the above-entitled case. Defendants respond that Claimant's motion is an attempt to obtain "a second bite at the apple" and would be a waste of judicial resources.

Claimant's initial motion was followed by various other documents, one of which Defendants moved to strike as untimely. Rule 3(F), J.R.P. The motion to strike is GRANTED. The ruling of the Commission will be based solely on Claimant's October 29 motion and Defendants' response.

After a thorough review of the procedural history in this case, it is apparent that the record is void of any stipulation, motion or order evidencing the consent of both parties to the substitution of a referee. While there is no statute or rule that requires the same referee to hear and decide a workers' compensation case, in light of the admission by Defendants that they were, in fact, contacted and consented to a substitute referee, the Commission finds that due

process is best served by vacating the October 15, 2007, Recommendation and Order.

Accordingly, Claimant's Motion for Reconsideration is GRANTED. The Recommendation and Order issued October 15, 2007, for the above-entitled matter should be, and is hereby, VACATED. The parties are charged with the responsibility of contacting the Commission with available dates for a re-hearing to be heard by one or more Commissioners.

DATED this _28th_ day of _December_____, 2007.

INDUSTRIAL COMMISSION

_____/s/_____
James F. Kile, Chairman

_____/s/_____
R.D. Maynard, Commissioner

_____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _28_ day of __December__, 2007, a true and correct copy of the foregoing **ORDER VACATING RECOMMENDATION AND ORDER** was served by regular United States Mail upon each of the following persons:

DEAN A MARTIN
1471 SHORELINE DR STE 100
BOISE ID 83702

MITCHELL R BARKER
812 12TH AVE SOUTH STE E
NAMPA ID 83651

E SCOTT HARMON
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_____/s/_____